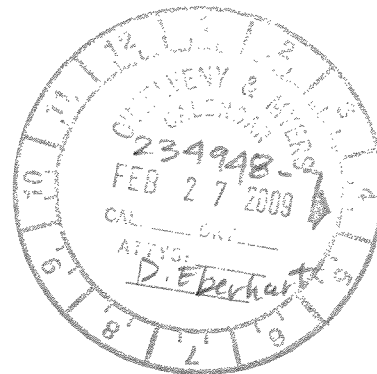


EXHIBIT 4



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Attorneys for Defendants Todd Dunning and
Dunning Enterprise, Inc.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EBAY, INC.,

Plaintiff,

v.

DIGITAL POINT SOLUTIONS, INC., SHAWN
HOGAN, KESSLER'S FLYING CIRCUS,
THUNDERWOOD HOLDINGS, INC., TODD
DUNNING, DUNNING ENTERPRISE, INC.,
BRIAN DUNNING, BRIANDUNNING.COM,
AND DOES 1-20,

Defendants.

CASE NO.: CV-08-4052 JF

**DEFENDANT DUNNING
ENTERPRISE, INC.'S RESPONSES
TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

PROPOUNDING PARTY:

PLAINTIFF EBAY INC.

RESPONDING PARTY:

DEFENDANT DUNNING ENTERPRISE, INC.

SET NUMBER:

ONE

Defendant Dunning Enterprise, Inc. ("Defendant") hereby submits the following objections and responses to the First Set of Interrogatories propounded by Plaintiff Ebay, Inc. ("Plaintiff").

GENERAL STATEMENT

Todd Dunning has invoked his privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Since Mr. Dunning is the sole shareholder and sole authorized representative of Defendant, and the only person who can verify discovery responses on behalf of Defendant, Defendant cannot provide any verified responses without compromising Mr. Dunning's right against self-incrimination.

Should Mr. Dunning determine that there is no longer the threat of potential criminal prosecution and elect to withdraw his privilege against self-incrimination in the future, Defendant expressly reserves the right to supplement its responses.

Furthermore, the Federal Bureau of Investigation has seized all documents and computers, disk drives, hard drives, cell phones and servers containing information potentially related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this investigation has refused all requests to provide defendants with a copy of the material seized by the FBI. Those items and records may contain information responsive to the requests below, but those items and records are not in the possession, custody or control of defendants.

INTERROGATORY NO. 1:

Identify all persons or entities with knowledge regarding Dunning Enterprise's participation, manipulation or interaction in any Affiliate Marketing Program including eBay's Affiliate Marketing Programs including, but not limited to, all methods, techniques and technologies, software, source code, Javascript and HTML code, used by Dunning Enterprise to obtain revenue from, or otherwise interact with, participate in or manipulate any Affiliate Marketing Program.

RESPONSE TO INTERROGATORY NO. 1:

Defendant objects to this interrogatory on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Defendant further objects on the ground that this interrogatory is vague and ambiguous, overbroad, unduly burdensome and oppressive. Defendant further objects on the grounds that that the term "manipulation" and "manipulate" are vague, argumentative and conclusory. Defendant further objects that to the extent this interrogatory seeks information related to programs other than eBay's Affiliate Marketing Program, the interrogatory is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this interrogatory on the ground that it seeks production of trade secrets or other confidential information.

INTERROGATORY NO. 2:

Identify all Internet Forums at, within or through which Dunning Enterprise discussed any aspect of their participation, manipulation of or interaction with eBay's Affiliate Marketing Programs, or any other Affiliate Marketing Program.

RESPONSE TO INTERROGATORY NO. 2:

Defendant objects to this interrogatory on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Defendant further objects on the ground that this interrogatory is vague and ambiguous, overbroad, unduly burdensome and oppressive. Defendant further objects that to the extent this interrogatory seeks documents related to programs other than eBay's Affiliate Marketing Program, the interrogatory is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects on the grounds that that the term "manipulation" is vague, argumentative and conclusory.

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FREELAND COOPER & FOREMAN LLP

150 Spear Street, Suite 1800
San Francisco, California 94105

1 Defendant further objects to this interrogatory on the ground that it seeks production of trade secrets
2 or other confidential information.

3 Dated: February 26, 2009

FREELAND COOPER & FOREMAN LLP

By:



Stewart H. Foreman
Attorneys for Defendants Todd Dunning and
Dunning Enterprise, Inc.

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1 **CERTIFICATE OF SERVICE**

2 I am employed in the City and County of San Francisco, State of California. I am over
3 the age of eighteen and not a party to the within action; my business address is 150 Spear
4 Street, Suite 1800, San Francisco, California 94105.

5 On February 26, 2009, I served the foregoing document described as follows:

6 **Defendant Dunning Enterprise, Inc.'s Responses to Plaintiff's First Set of Interrogatories**

7 by placing a true and correct copy thereof enclosed in a sealed envelope addressed to the
8 party(ies) of record whose name(s) and address(es) appear below:

9 **SEE ATTACHED SERVICE LIST**

10 X [BY MAIL - CCP § 1013a] I caused such sealed envelope with postage thereon fully
11 prepaid to be placed in the United States mail at San Francisco, California, for collection and
12 mailing to the office of addressee(s) on the date shown herein following ordinary business
13 practice.

14 [HAND-DELIVERY/Personal/Messenger - CCP § 1011] I caused such envelope to be
15 hand-delivered by a courier, who personally delivered such envelope to the office of the
16 addressee(s) on the date herein.

17 [BY FACSIMILE - CCP § 1013(e)] - I caused such document(s) to be transmitted via
18 facsimile electronic equipment transmission on the party(ies), whose name(s), address(es)
19 and fax number(s) are listed above, on the date stated herein and at the time set forth on the
20 attached transmission reported indicating that the facsimile transmission was complete and
21 without error.

22 [BY FEDEX (Overnight Delivery) - CCP § 1013(c)] I caused such envelope to be
23 delivered to the Federal Express Office in San Francisco, California, with whom we have a
24 direct billing account, to be delivered on the next business day.

25 [BY E-MAIL or ELECTRONIC TRANSMISSION] . Based on a court order or agreement of
26 the parties to accept service by e-mail or electronic transmission, I caused the documents to
27 be sent to the persons at the email addresses listed above. I did not receive within a
28 reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

[STATE] I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

X [FEDERAL] Service was made under the direction of a member of the bar of this Court who
is admitted to practice and is not a party to this cause.

Executed on February 26, 2009, at San Francisco, California.


Joyce E. Johnson

ATTACHED SERVICE LIST

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